

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TAKRID HADI KADHIM,

Plaintiff,

v.

ALBERTO R. GONZALES, et al.,

Respondents.

No. C06-1290MJP

ORDER DENYING MOTION TO  
DISMISS AND SETTING  
EVIDENTIARY HEARING

This matter comes before the Court on an Order to Show Cause why the Court should not grant Plaintiff's application for naturalization. (Dkt. No. 17.) The Government has filed a brief that is both a response to the Court's Order to Show Cause as well as a Motion to Dismiss and Remand. (Dkt. No. 18.) Having reviewed the Government's Response, Plaintiff's Reply (Dkt. No. 19), the Government's Reply (Dkt. No. 20), all documents submitted in support thereof, and the record in this case, the Court STRIKES without prejudice the Government's motion to remand and dismiss and grants the Government an additional forty-five days to complete its investigation of the results of Ms. Kadhim's name check.

**Background**

Plaintiff Takrid Hadi Kadhim is a native of Iraq. On September 16, 2006, she filed an application for naturalization with the United States Citizenship & Immigration Services ("USCIS"). Ms. Kadhim met with USCIS officials for her citizenship interview on November 29, 2005, and again on March 1, 2006. At the second interview, she passed the English language, and U.S. history and government tests, but her application was continued for completion of security checks. The security checks have now been completed. However, Ms. Kadhim's application has not been adjudicated

1 because, as USCIS explains, “[t]he security check responses raise issues requiring intensive review  
2 that potentially impact Ms. Kadhim’s eligibility for naturalization.” (Harrison Decl. ¶ 19.)

3 On September 8, 2006, Ms. Kadhim filed this action, which requests that the Court set a  
4 naturalization hearing and approve her naturalization application. After granting, upon joint request,  
5 a number of continuances, the Court issued an order to show cause why the Court should not grant  
6 the naturalization petition. (Dkt. No. 17.) In response, USCIS urges the Court to remand this matter  
7 to the agency because there is a genuine issue as to whether Ms. Kadhim satisfies the naturalization  
8 eligibility requirements and because USCIS is in the best position to complete the investigation.  
9 Plaintiff argues that USCIS has failed to show cause why she should not be naturalized and asks that  
10 the Court grant her naturalization application. Plaintiff also requests costs, expenses, and attorneys  
11 fees.

## 12 Discussion

### 13 I. Jurisdiction

14 The Court has previously decided that it has subject matter jurisdiction over this type of case  
15 under 8 U.S.C. § 1447(b).<sup>1</sup> Weir v. Gonzales, Case No. C07-0074MJP, 2007 U.S. Dist. LEXIS  
16 35115 (W.D. Wash. May 14, 2007); Aslam v. Gonzales, No. C06-614, 2006 U.S. Dist. LEXIS  
17 91747 (W.D. Wash. Dec. 19, 2006); Said v. Gonzales, No. C06-986, 2006 U.S. Dist. LEXIS 67750  
18 (W.D. Wash. Sept. 21, 2006). 8 U.S.C. § 1447(b) provides as follows:

19 If there is a failure to make a determination under section 1446 of this title before the  
20 end of the 120-day period after the date on which the examination is conducted under  
21 such section, the applicant may apply to the United States district court for the district  
22 in which the applicant resides for a hearing on the matter. Such court has jurisdiction  
23 over the matter and may either determine the matter or remand the matter, with  
24 appropriate instructions, to [USCIS] to determine the matter.

25 Under the statute, the Court obtains jurisdiction over a naturalization application when USCIS has  
26 not made a decision on the application within 120 days of the applicant’s interview. See Weir, 2007  
U.S. Dist. LEXIS 35115, at \*4-5; see also Walji v. Gonzales, 2007 U.S. App. LEXIS 22102

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<sup>1</sup> The Government does not challenge the Court’s jurisdiction in this case.  
ORDER - 2

1 (September 14, 2007) (holding, on rehearing, that district court has jurisdiction under 8 U.S.C. §  
2 1447(b) after the expiration of 120 days after the date of the application interview).

3 Ms. Kadhim was interviewed by USCIS on March 1, 2006, triggering the start of the 120-day  
4 period. More than 180 days elapsed between the date of Ms. Kadhim's interview and the filing of her  
5 petition on September 8, 2006. This period exceeds the 120-day time limit required under section  
6 1447(b). Therefore, because over 120 days elapsed since Plaintiff's interview, this Court has subject  
7 matter jurisdiction over the issues raised in Plaintiff's complaint.

## 8 **II. Available Relief**

9 USCIS has failed to make a determination on Ms. Kadhim's petition for naturalization within  
10 120 days of her examination in violation of 8 U.S.C. § 1447(b). Plaintiff requests that the Court  
11 grant her naturalization application. Defendants ask that the Court remand to USCIS with  
12 instructions that USCIS complete the investigation into Ms. Kadhim's eligibility for naturalization and  
13 adjudicate her naturalization application upon completion of the investigation. But Defendants offer  
14 no substantive reason why the naturalization application should not be granted. They offer only the  
15 statement that the FBI's response "raises issues requiring intensive review, and additional inquiries,  
16 that potentially impact Plaintiff's eligibility for naturalization." (Reply at 2.) This cryptic allegation  
17 does not satisfy the Court's requirement that the Government show cause why Ms. Kadhim should  
18 not be immediately naturalized.

19 The Court concludes that the appropriate course of action is to retain jurisdiction over this  
20 matter and provide Defendants with additional time to analyze the results of the FBI name check and  
21 to follow up with Ms. Kadhim regarding this matter. Defendants are directed to provide the Court  
22 and Plaintiff with a status report by **December 17, 2007**. If the status report indicates that there is no  
23 barrier to Plaintiff's naturalization, the Court will issue an order directing USCIS to issue a Certificate  
24 of Naturalization and to administer the oath of citizenship. If, however, Defendants indicate in the  
25 status report that there is a barrier to Plaintiff's naturalization or that they have not yet completed  
26 their analysis regarding the results of the FBI name check, the Court will hold a show cause hearing  
on this matter on **December 18, 2007, at 1:30 p.m.**, in the courtroom of the Honorable Marsha J.

1 Pechman in the U.S. District Court at 700 Stewart Street in Seattle, WA. If appropriate, the  
2 Government may request that it be allowed to submit the results of the FBI name check *in camera* for  
3 the Court's review, as it has done in a prior case. See Mroczek v. Gonzales, C07-0069MJP (July 26,  
4 2007). Moreover, if the parties wish to conduct discovery, they may ask the Court to set a schedule  
5 for doing so.


### 6 **III. Costs, Expenses, and Attorneys Fees**

7 Plaintiff requests costs, expenses, and attorneys fees for preparation of the reply to the  
8 Government's response. Counsel for Plaintiff argues that USCIS has been "deceptive in dealing  
9 with" Ms. Kadhim. (Pet.'s Reply at 2.) Counsel states that USCIS asked Plaintiff for a continuance  
10 in this case on the grounds that the name check had not been completed, when, in actuality, the name  
11 check had been completed months prior. (*Id.*) However, the Assistant United States Attorney  
12 handling this case states in response that it was his mistake that led to the confusion — he incorrectly  
13 told Plaintiff that the name check was still pending with the FBI when in fact it was pending with  
14 USCIS. (Def.'s Reply at 1.) Because it appears that the Government did not intend to deceive  
15 Plaintiff, costs, fees and expenses are not warranted.

### 16 **Conclusion**

17 The Court grants the Government until December 17, 2007, to complete its investigation of  
18 the results of Ms. Kadhim's name check. By December 17, Defendants must inform the Court  
19 whether (1) it is ready to grant the naturalization application, (2) there is a barrier to Plaintiff's  
20 naturalization, or (3) they have not yet completed their analysis regarding the results of the FBI name  
21 check. If necessary, the Court will hold an evidentiary hearing on December 18, 2007, at 1:30 p.m. at  
22 which the Government must show cause why Ms. Kadhim should not be immediately naturalized. In  
23 light of this order, Defendant's motion to remand is STRICKEN from the Court's motion calendar,  
24 without prejudice to renewal.

25 Dated this 2nd day of November, 2007.

26   
Marsha J. Pechman  
United States District Judge